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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BARBARA WILHELM, :
Plaintiff :
: :
v. : 01-CV-1057
COMMONWEALTH OF PA, et al., :
Defendants :
:

FILED
HARRISBURG, PA

JAN 28 2003

MARY E. D'ANDREA, CLE
Per Sylvia H. Rambo, Clerk

TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

TESTIMONY OF GARRET RAIN

BEFORE: HON. SYLVIA H. RAMBO, Judge

DATE: September 10, 2002

PLACE: Courtroom Number Three
Federal Building
Harrisburg, Pennsylvania

COUNSEL PRESENT:

NATHAN C. PRINGLE, JR., Esquire
For - Plaintiff

SUSAN J. FORNEY, Esquire
For - Defendant

Vicki L. Fox, RMR
Official Reporter

1 I N D E X

2 Direct Cross Redirect Recross

3 Defendant's Witnesses

4 6. Garret Rain
5 By Ms. Forney
6 By Mr. Pringle

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Rain - Direct

1 MS. FORNEY: Your Honor defendants call Garret
2 Rain.

3
4 GARRET RAIN, called as a witness, being duly
5 sworn, testified as follows:

6
7 THE CLERK: Would you state your name, please?

8 A Garret L. Rain.

9 DIRECT EXAMINATION

10 BY MS. FORNEY:

11 Q Sir, are you currently employed?

12 A Yes, I am.

13 Q I think I asked you whether you are currently
14 employed?

15 A Yes, I am. I am a member of the Pennsylvania State
16 Police. I am a Sergeant with the Pennsylvania State Police
17 in Harrisburg. And I currently supervise the Criminal
18 Investigative Section in Harrisburg, the local State Police
19 function.

20 Q How long have you had that job?

21 A It's going on about six months.

22 Q Before that, what did you do?

23 A I worked in our Bureau of Professional Responsibility,
24 Internal Affairs Division. I conducted internal affairs
25 investigations, and I did that for about three and a half

Rain - Direct

1 years.

2 Q In June of 1999, were you called upon to conduct an
3 investigation based on a complaint that Major Richard Morris
4 had submitted with regard to Captain Michael Simmers?

5 A Yes, I did.

6 Q And what upon receiving that assignment, would you tell
7 me how you went about investigating it?

8 A Yes. In our internal investigative process, to start
9 an investigation, one has to file a form. As in government,
10 you always have to have a form to start anything. One of the
11 forms, we have is a complaint worksheet.

12 Upon receipt of the complaint worksheet, my
13 supervisors determined that an investigation is warranted,
14 and they assigned me to do the investigation.

15 I took the preliminary information that was found
16 on that sheet and contacted the complainant, the person who
17 actually filed the worksheet on behalf of Ms. Wilhelm, which
18 was Major Morris. And then I scheduled a date and time to
19 meet with Major Morris and to conduct an interview to find
20 out what information he had available that may be relative to
21 this matter.

22 Q After you spoke with Major Morris, what was your next
23 step in the investigation?

24 A The next step in the investigation was for me to try to
25 schedule an appointment and interview Ms. Wilhelm. I did get

Rain - Direct

1 ahold of her, and we set up a preliminary time to get
2 together. And we did meet.

3 If you are looking for specific dates, I
4 originally attempted -- we got ahold of her on June 10th.
5 Correction. Strike that. That would be June 15th. We were
6 supposed to meet --

7 MR. PRINGLE: Excuse me, Your Honor. It looks
8 like he is reading from something. I don't know what he is
9 reading from.

10 THE COURT: Would you like to look at it?

11 MR. PRINGLE: Yes, Your Honor.

12 MS. FORNEY: May I just see it?

13 BY MS. FORNEY:

14 Q You may use this to refresh your recollection, but it
15 is not appropriate to read from it. All right.

16 A Thank you.

17 Q Why don't you identify the document that you are using
18 to refresh your recollection?

19 A Certainly. This is the General Investigation Report.
20 It is the report that I drafted as a result of conducting
21 this investigation and the attachments that I collected in
22 the course of conducting the investigation.

23 Q I think you were telling me that you were trying to
24 contact Ms. Wilhelm in order to speak with her.

25 Would you continue to tell me how you went about

Rain - Direct

1 doing that?

2 A Certainly. I spoke with her I believe by telephone.
3 We made an appointment and were able to get together on it
4 would be June the 21st of 1999. And we met over at the
5 Commonwealth Information Center. It is a facility off of the
6 State Hospital grounds. This was a location that Ms. Wilhelm
7 had chosen for the sake of privacy.

8 She arranged for the room -- the conference room
9 over there and scheduled for it. And I met her there, and we
10 spoke.

11 Q Do you recall what you talked about?

12 A Yes. I went there with the intent of conducting an
13 interview and actually tape recording the interview which was
14 our common protocol. That don't work out that way.

15 She ended up handing me some paperwork having to
16 do with something for which I had been unfamiliar with. She
17 filed paperwork asking for a job classification summary
18 review. In essence, to have like a survey done of the work
19 office to see if everyone was doing tasks that were
20 appropriate for their job description and pay scale.

21 I explained that this is something that the
22 Internal Affairs Division doesn't handle. That would be
23 something that would have to be funneled through the Bureau
24 of Personnel, now called the Bureau of Human Resources.

25 We conduct investigations into allegations of

Rain - Direct

1 criminal or administrative misconduct on the part of State
2 Police members. In other words, did they commit any crimes,
3 did they break any rules within the Pennsylvania State Police
4 documents.

5 Q There are a number of exhibits on the desk in front of
6 you. Could you locate Plaintiff Exhibit 22?

7 A Yes, I found Exhibit 22.

8 Q This is a memo dated June 21, 1999 from Barbara Wilhelm
9 to the Bureau of Professional Responsibility; is that
10 correct?

11 A That is correct.

12 Q Is this the document that you just referred to that Ms.
13 Wilhelm gave to you at your first meeting?

14 A Yes. If I might just check the attachment list on my
15 report to make sure that this is the same one. It appears to
16 be. But we can see we have lots of documents. Yes, this is
17 it.

18 Q Did you have any other conversation that you can recall
19 of Ms. Wilhelm during this first meeting with her?

20 A Yes. We discussed the nature of investigations. She
21 was questioning the confidentiality of how investigations
22 could be conducted. And I explained to her that our
23 investigations are held confidential and that I speak to
24 people that I need to speak to, that I document information
25 that is given to me, and that is provided up through my chain

Rain - Direct

1 of command and then ultimately finds its way to the subject
2 of the investigation's supervisor. And they are the ones
3 that make a determination of wrongdoing or not.

4 Q During the course of this June meeting that you had
5 with Ms. Wilhelm, do you recall her saying anything to you
6 about sex discrimination?

7 A No.

8 Q Do you recall her saying anything to do you with being
9 treated differently because she was a woman?

10 A No. She made no such allegations. Now she did
11 complain in the course of conversation about some
12 difficulties in the office. And mostly, it had to do with
13 Captain Simmers not being able to necessarily work at the
14 same level of -- skill level as herself, and that he is not
15 competent for the job that he worked at.

16 General allegations of misuse of time. In other
17 words, not necessarily -- taking maybe long lunches,
18 implications of those kinds of things. She didn't provide me
19 with any specific information of specific wrongdoing, which I
20 very much tried to elicit from her on this occasion and other
21 occasions.

22 Q When you refer to specific information, what kind of
23 information were you looking for?

24 A Well, specific information had to do with this date and
25 time, I saw Captain Simmers do this, and it's wrong. It is

Rain - Direct

1 in violation of State Police rules and regulations for that
2 to occur.

3 She would not provide me with any direct
4 information, any specific information of anything that he had
5 done that was inappropriate. And I would elicit this
6 information from her, and she would decline to present it to
7 me.

8 From later meetings we had, she actually gave me a
9 document relating that she just didn't want anything done
10 basically at this time.

11 Q So you were looking for her -- from her for this day he
12 did this, this day he did that, and when's, who's, what's
13 that sort of thing?

14 A That's correct. I was looking for the
15 complainant/victim to provide me with information that would
16 be necessary for me to conduct the investigation. For any
17 criminal justice issue kind of thing to occur and to occur
18 well, it requires the cooperation of people involved in the
19 matter.

20 If the person who is the victim or the complainant
21 in this matter won't cooperate and provide information that
22 they only hold, it makes it very difficult for the
23 investigator to try to follow up on things that aren't given
24 to them.

25 Q How did the June meeting with Ms. Wilhelm end?

Rain - Direct

1 A I took the paperwork that she had given me, and we sort
2 of adjourned to schedule another date to get back together
3 and actually go through the nuances of her complaint.

4 Q And at the end of the meeting in June, what did you
5 understand her complaint to be?

6 A Basically having to do with inappropriate use of state
7 time, and she would have allegations of general harassment.

8 Q Tell me what you mean by general harassment.

9 A From conversations with Ms. Wilhelm, she would indicate
10 that things in her office had been moved or disturbed, that
11 she had gotten locked out of her office on a couple of
12 occasions, and she believed that Captain Simmers was
13 responsible for these things.

14 Q Did you meet again with Ms. Wilhelm?

15 A Yes, we did. We had a couple of -- we had a little
16 difficulty getting back together again. From refreshing my
17 recollection with the report here, on Wednesday, July 14th of
18 1999, we met again over at SEMIC.

19 Q What do you recall about that meeting?

20 A In that meeting, Ms. Wilhelm gave me another document
21 basically relating that she didn't want anything else done in
22 this matter, and that she's going to be referring this
23 investigation and her complaint to another government
24 entity.

25 I inquired for more specifics, which particular

Rain - Direct

1 government entity to whom are you going to refer this. And
2 she refused to provide me with that information. She
3 indicated that we or they were going to do it so I knew that
4 somebody else was involved.

5 I inquired as to whether she had an attorney. She
6 related she did. I asked for the name of her attorney
7 because I thought maybe I might be able to talk to her
8 attorney to see if it would be possible to gather the
9 information that would be necessary for me to address all of
10 her concerns in this matter. She wouldn't provide me with
11 the name of her attorney either.

12 Q There is an exhibit Plaintiff Exhibit 24 on the table.
13 Could you look for it?

14 A Yes, I have that.

15 Q Is this the document that Ms. Wilhelm provided to you
16 in your July meeting?

17 A Yes, it is.

18 Q How did the meeting in July end?

19 A She was not willing to provide me additional
20 information, and we went our various ways.

21 Q Now in this meeting, did she tell you that she was the
22 victim of sex discrimination?

23 A No, she did not.

24 Q Did she mention anything in this meeting about being
25 badly treated because she was a woman?

Rain - Direct

1 A No, she did not.

2 Q Did she make any comments about disparate treatment?

3 A No, she did not.

4 Q Do you recall any comments about preferential treatment
5 of men?

6 A No, not from her.

7 Q What did you do next in your investigation?

8 A The next thing that I did is that I conducted an
9 interview with Captain Simmers. That was on August 25th of
10 1999.

11 Q Why was it that you interviewed Captain Simmers?

12 A Because he is the subject of this investigation. The
13 people who are generally best to talk to are the
14 complainant/victim and the person who is accused of the
15 wrongdoing. Those are the ones who are primarily going to
16 hold the information.

17 Q Was there any discussion about whether you should be
18 interviewing Captain Simmers that you participated in?

19 A THE COURT: Discussion with whom?

20 BY MS. FORNEY:

21 Q Did he discuss the advisability of interviewing Captain
22 Simmers with anyone?

23 A Did I?

24 Q Yes.

25 A Talk about it with anyone, whether it was appropriate?

Rain - Direct

1 Q Yes.

2 A No. My Captain, Captain Brown, instructed me that
3 enough time had passed in this investigation and that I would
4 like you to interview Captain Simmers and schedule it
5 promptly. And I did so.

6 Q Did you do anything further after you spoke with
7 Captain Simmers?

8 A Yes. I also interviewed Ron Plesco, who was a coworker
9 in the office. This particular office just had three people
10 in it. So the amount of potential witnesses that would
11 actually see the goings on, what takes place in the office
12 rested with those three people -- correction, four people.
13 You would have Major Morris. You had Barb Wilhelm. You had
14 Captain Simmers, and you had Ron Plesco.

15 I went to Ron Plesco, who was the neutral odd man
16 out in this whole matter, and interviewed him.

17 Q Was there any particular reason that you interviewed --
18 you didn't interview Ron Plesco until after you talked to
19 Captain Simmers?

20 A No particular reason.

21 Q Did you have any concern that interviewing Ron Plesco
22 after Captain Simmers might in any way compromise the
23 investigation?

24 A No. I didn't have that concern.

25 Q Why is that?

Rain - Direct

1 A I understand maybe some of the background. There is
2 a general policy within our Department to interview the
3 subject of the investigation last. That is not a hard and
4 fast rule. It is somewhat of a principle.

5 There's times when it is strategically better to
6 interview the subject -- the accused person early in the
7 investigation or first. In this particular case, he was sort
8 of in the middle.

9 When it comes to making that determination, some
10 things you're going to take into consideration. Some things
11 you are going to take into consideration is what is the
12 possibility that the subject, the accused person, would be
13 able to influence or cause some pressure upon witnesses and
14 then they might be not be really interested in telling me the
15 whole story.

16 In this particular case, that wasn't a factor
17 because Ron Plesco, he had dual reporting responsibilities.
18 Yes, he was paid sort out of a general budget of the
19 Pennsylvania State Police, and he had a Pennsylvania State
20 Police civilian identification badge, but he also reported
21 directly to the Governor's Office.

22 If Captain Simmers would apply any pressure to --
23 excuse me -- to Mr. Ron Plesco, he could just easily give
24 word to the Governor that he is not being treated properly,
25 and word would come back from the Governor back to the

Rain - Direct

1 Colonel, and things would be taken care of.

2 I don't see Captain Simmers had any particular
3 power over Ron Plesco. If it was anything, it would have
4 been the other way around.

5 Q After you spoke with Mr. Plesco, did you do anything
6 else to pursue that investigation?

7 A Yes. If I may just refresh my recollection here. One
8 of the other things on August 27, I reviewed Ms. Wilhelm's
9 personnel file held in the Bureau of Personnel and extracted
10 some information from there.

11 On September 10th while I was over -- correction.
12 I am jumping some things there. I didn't find some of the
13 performance evaluations that I was looking for in that file.
14 I found out they were probably over in the Commissioner's
15 complex and got permission and went over on September 8th and
16 obtained copies of some documents I was looking for as
17 attachments to this investigation.

18 And then on September 10th, 1999, I encountered
19 Ms. Wilhelm out in the hall outside the Commissioner's
20 Complex on third floor of the Pennsylvania State Police
21 Department Headquarters building.

22 Q Did you have a conversation about the investigation
23 with Ms. Wilhelm on September 10th?

24 A Yes, I did. I saw her in the hall. There was a little
25 bit of chit-chat. She then asked me to come into her office

Rain - Direct

1 which was just the next door down.

2 So I went in. She said she had some documents for
3 me. If I remember correctly, she gave me a pamphlet and some
4 information for an information source that really didn't have
5 anything to do with this investigation. She just wanted to
6 share some potential information source with me.

7 And in the course of talking to her, she related
8 that Major Morris had been away on leave or had been out of
9 the office, and Captain Simmers was acting during that period
10 of time, and that she was having -- had been having fun or
11 having a ball with what had been going on.

12 She had been adding -- in this conversation, I
13 also -- we also talked about the status of her complaint.
14 She didn't file it, but it was filed on her behalf. I told
15 her that I had been working on my investigative report, and
16 it should be submitted soon.

17 She replied that she had been working on her
18 paperwork also, and she just added six more pages to it. I
19 just noted that it was sort of an unusual encounter.

20 MR. PRINGLE: Objection.

21 THE COURT: Sustained.

22 BY MS. FORNEY:

23 Q You say you met with -- you ran into Ms. Wilhelm on
24 September 10th. Did she offer you any information for use in
25 your investigation?

Rain - Direct

1 A She indicated that while Major Morris was away and that
2 Captain Simmers was working is that he was leaving early and
3 putting in for comp. time. In other words, he was not really
4 working full days, and that was some of the information she
5 provided, yes.

6 Q And did you do anything with that information?

7 A Yes. At a later date. I would have to look up the
8 date to give you the actual information. It was on September
9 17th I spoke with Major Morris. He had returned from being
10 off on leave.

11 I inquired if there was any indication that
12 Captain Simmers had been sluffing off on duties, that he had
13 been leaving early. If any of these allegations that Ms.
14 Wilhelm had inferred, was there any substance to them. He
15 related no.

16 MR. PRINGLE: Objection.

17 THE COURT: Sustained.

18 BY MS. FORNEY:

19 Q Other than the information about Captain Simmers and
20 the comp. time, did Ms. Wilhelm offer you anything else in
21 terms of her complaints, her concerns?

22 A No.

23 Q How is it that you remember this encounter with Ms.
24 Wilhelm?

25 A It was a little uncomfortable because I was just in the

Rain - Direct

1 office next door gathering up and picking up some documents
2 that were related to the investigation. I encountered her
3 when I was coming out the door. It was sort of memorable.

4 I also took notes of it right after the event
5 occurred because the conversation that she related to me I
6 thought was important, and I wanted to make sure to retain it
7 for my report.

8 Q And when did you complete your report?

9 A My report was submitted September 15th of 1999.

10 THE COURT: September 15?

11 A That's correct.

12 BY MS. FORNEY:

13 Q You mentioned you had talked to Major Morris on the
14 17th?

15 A Well, the only explanation I can give is the date on
16 the front of my report is not correct. I may have to look at
17 some of the referral slips. I certainly drafted the report
18 after I spoke to him.

19 I must have the wrong date on the front page of my
20 report. It does say September 15th of 1999 on the front
21 page. But I am working on the report. It is a work in
22 progress.

23 MR. PRINGLE: Objection. There is no question.

24 THE COURT: There is no question on the floor.

25

Rain - Direct

1 BY MS. FORNEY:

2 Q Would you explain how it could be that the date on the
3 front of your report is incorrect?

4 A I don't sit down at the end of the investigation and
5 type the report up. I type the report up as I do things.
6 Now obviously, you don't in the format of a report if there
7 is one synopsis, the synopsis, which is on the front, you end
8 up doing last. You are typing the details as you do the
9 report.

10 I have this in a word template. And I just add
11 more information in when I get to the new information. It
12 just keeps going on in the end. The template is designed in
13 such a way that it has the date on it, and I must have failed
14 to update the date on the upper right-hand corner of the
15 report when I actually submitted it.

16 Q Can you determine when you actually submitted it?

17 A It would have had to have been after the 17th unless I
18 misspoke. Let me double check that. No, it was August -- I
19 hold on. Now I am all confused.

20 No. I clearly have September 17th as when I spoke
21 with Major Morris.

22 Q Are you familiar with the relationship between the
23 Internal Affairs investigation and the disciplinary system of
24 the State Police?

25 A I am not sure I understand the question.

Rain - Direct

1 Q Do you understand -- let me rephrase the question. It
2 is an important question.

3 Is there a relationship between Internal Affairs
4 investigations and discipline within the State Police?

5 A There is a relationship, but I am not the cause. An
6 allegation comes in. A complaint is investigated. The
7 investigation is documented on the report. And then the
8 report is forwarded to a person called an adjudicator.

9 In this case, the adjudicator is normally like a
10 Troop Commander or a Bureau Director. Those are the people
11 who are assigned the task of reading through the
12 investigative report and making a determination is there any
13 wrongdoing here.

14 There's three choices that they can give. One is
15 it is an unfounded complaint. There is no evidence
16 whatsoever in the adjudicator's opinion that this allegation,
17 what this member has been accused of happened.

18 You have a nonsustained which means you know, I
19 can't tell one way or the other. And then you have a
20 sustained investigation, yes, I am convinced that what
21 happened happened.

22 Q Is the adjudicator usually in the chain of command the
23 individual who is being investigated?

24 A Yes. It's normally the Bureau Director or Troop
25 Commander who is responsible for a complement of personnel.

Rain - Direct

1 But it is always going to be at least one rank level above
2 the person who is the subject of the investigation. It is
3 always someone's boss.

4 Q If an investigation is founded, what is the next step
5 in the process?

6 A The next step in the process is a determination of what
7 kind of penalty could potentially be imposed. Are they going
8 to issue a disciplinary action report? In other words, are
9 we going to try to give someone a penalty such as suspending
10 them without pay, transferring them, demoting them, firing
11 them, those kinds of things.

12 That determination is made primarily by the
13 Disciplinary Officer. And currently, that is Captain
14 Titler. He makes those determinations as to what would be
15 the appropriate penalty.

16 Now the adjudicator has some input involved in
17 that process, but that's where the process -- where the
18 actual determination of what penalty to impose comes from is
19 from our DDO.

20 Q Is there a further step after a penalty is determined?

21 A Yes. Let's say a member is suspended for fifteen days
22 without pay. They can just accept it, or they could ask --
23 they could grieve it, which is the most common thing that
24 happens.

25

Rain - Direct

1 Technically, they could also ask for a
2 court-martial. I've never heard of it actually occurring in
3 recent history. They will normally request that an
4 arbitrator review the matter and make a determination of
5 whether or not they really did what they were accused to of
6 having done or whether or not the penalty that has been
7 imposed upon them is appropriate for the crime that they have
8 been alleged to have committed. I didn't mean that crime
9 literally, but offense.

10 Q Under the disciplinary system of the State Police, is
11 it possible for a disciplinary action report to issue and a
12 penalty be imposed without a Bureau of Professional
13 Responsibility investigation?

14 A No.

15 THE COURT: Is there any relevance to this line of
16 questioning?

17 MS. FORNEY: I am about done with it, Your Honor.
18 There has been a lot of talk about adjudicators, about
19 discipline, about complaints, about doing things. I simply
20 wanted to make the system that is in place clear to the
21 jury.

22 MS. FORNEY: May the witness respond to the
23 question?

24 THE COURT: Yes.

25 A I sort of got lost in that. Could you rephrase it,

Rain - Cross

1 please?

2 BY MS. FORNEY:

3 Q I apologize. In the State Police disciplinary system,
4 is it possible for discipline to be imposed without a Bureau
5 of Professional Responsibility investigation and
6 adjudication?

7 A No, it is not.

8 MS. FORNEY: No other questions.

9 THE COURT: Cross-examine.

10 CROSS EXAMINATION

11 BY MR. PRINGLE:

12 Q When you spoke to Ms. Wilhelm the first time, didn't
13 she indicate to you that she was concerned about
14 confidentiality with respect to giving you information?

15 A She expressed that as a concern, yes. And I endeavored
16 to ensure her that it would remain confidential.

17 Q Didn't you also endeavor to ensure her that you would
18 have to turn over information to your superiors?

19 A Certainly. I would have to submit the report, and my
20 boss would read the report, yes.

21 Q And that might include Lieutenant Colonel Coury?

22 A Yes.

23 Q Did Lieutenant Colonel Coury get involved in this
24 investigation?

25 A Not to my direct knowledge.

Rain - Cross

1 Q What does that mean, not to your direct knowledge? Do
2 you have any knowledge about him being involved?

3 A In conversations with Captain Brown, there may have
4 been an occasion where he mentioned that Captain Coury --
5 Lieutenant Colonel Coury had made some inquiries.

6 And I believe there was also a buck slip memo that
7 I may have seen in the packet that showed that he had seen or
8 handled the packet at some point in time.

9 Q How many investigations have you done prior to this?

10 A As in any way, shape or form, or as an Internal Affairs
11 investigator?

12 Q Internal Affairs investigator.

13 A I believe I have been in the Internal Affairs Division
14 for about a year at this time.

15 Q Prior to that --

16 A A couple of dozen.

17 Q A couple of dozen?

18 A I was a criminal investigative supervisor for years
19 before that.

20 Q I am asking about Internal Affairs. A couple of dozen,
21 does that mean 12 or 24?

22 A Between 12 and 24. I don't have the exact number right
23 at hand.

24 Q During the course of these investigations -- strike
25 that. During your discussion with Major Morris, your

Rain - Cross

1 interview with Agent Morris, isn't it true that he did raise
2 issues about gender based discrimination?

3 A He expressed concern that Ms. Wilhelm might possibly
4 raise those as complaints, yes, in particular having to do
5 with like not being able to have a car when other people had
6 a car. I have also seen this on some documents that had been
7 written. The other people in the office had a car, and she
8 didn't have a car. That was an item of contention.

9 Q He brought that to your attention, that issue?

10 A I am not positive if he brought that matter to my
11 attention or if I am remembering that from other documents
12 that I have read.

13 Q But you did have information regarding her concern
14 about not being discriminated against because she was a
15 woman, her not receiving a car and the men in the office
16 receiving a car?

17 A Yes.

18 Q Wasn't it also an issue in this investigation that she
19 believed she was being treated as a clerical person merely
20 because she was with a woman; weren't you aware of that?

21 A I had heard, yes, that Major Morris would discuss --
22 and I believe that I got it from another source also that
23 Captain Simmers would provide her or give her typing, and
24 that she didn't believe that that was suitable for her
25 position.

Rain - Cross

1 That matter was looked into with other interviews
2 that I had done.

3 Q But specifically, you understood that was a complaint
4 of sex discrimination; didn't you?

5 A I understand that she was making that as a complaint.

6 If I may more accurately rephrase that. That was an item
7 that she was unhappy about. Whether it was an official
8 complaint, I don't know because she didn't make that
9 complaint to me.

10 Q But you were aware that she was unhappy, and she was
11 expressing her unhappiness about the fact that she was
12 getting clerical work and that she believed that that was sex
13 discrimination?

14 A I don't know that they are making the link there
15 between the sex discrimination and the clerical work. The
16 two weren't combined. I know that she was complaining that
17 she was sometimes asked to do typing -- particularly when he
18 worked for Captain Simmers when he was her boss.

19 I do not know that she then told people that she
20 believed it was sex or gender based discrimination.

21 Q That is because you didn't talk to her? She didn't
22 raise that as an issue with you is what you are saying?

23 A No, she didn't raise it with me.

24 Q Did Major Morris raise that issue when he did his
25 interview?

Rain - Cross

1 A I don't believe he is linking the two together.

2 Q Do you remember having a conversation during your
3 interview process with Major Morris in which specifically he
4 was addressing the issue of her complaining about having to
5 do the clerical work because she is a woman?

6 A I believe he raised that, yes.

7 Q You did hear that is what I am asking?

8 A Yes.

9 Q During your course of the conversation with your
10 interview with Major Morris, isn't it true you were aware
11 that in connection with the complaint he was filing with IAD,
12 he also notified the EEO office?

13 A Yes. I also spoke with Major Smith-Elliott about this
14 matter, too.

15 Q So you talked with Major Smith-Elliott in connection
16 with this investigation?

17 A I touched base with her early on in the investigation
18 to see what information she might have and to gain any
19 particular advice I might need in case it went down that
20 path.

21 Q Did you talk to her after it did go down that path?

22 A I don't believe it went down that path because she
23 didn't make an allegation of gender based discrimination. I
24 am hearing this second hand information from other people
25 from what they think she said or she might do.

Rain - Cross

1 She never declared to me that she believed that
2 she was a victim of gender based discrimination. I didn't go
3 down that path because it wasn't given to me as a complaint.

4 Q I am a little confused here. You said that when Major
5 Morris discussed this with you, he indicated to you that she
6 was unhappy. He specifically indicated to you she was
7 unhappy that she was required to do filing because she was a
8 woman.

9 Are you saying that you did not take that as sex
10 based discrimination?

11 A I didn't take that as something that then I would run
12 with as a singular focus of the investigation.

13 Q You decided not to do anything with that, but you did
14 receive that information; isn't that true?

15 A I gathered the information. I documented the
16 information. I object to the comment of being said that I
17 didn't do anything with it. It wasn't hidden in any way,
18 happy or form.

19 The interviews were taped and transcribed. It is
20 not normally typical for members of the Internal Affairs
21 Division to do the gender based discrimination
22 investigations. They were done by Major Smith-Elliot at that
23 time who was our EEO person. That person knew there was an
24 investigation going on.

25 If there was a path, part of it would have been --

Rain - Cross

1 most of it would have pursued by her.

2 Q So you referred that part of it to her?

3 A I can't say that I gave her a copy. I believe she was
4 in the routing of the paperwork of the report. Yes, she
5 would have seen everything that was in this. I know that she
6 was on the routing slip.

7 Q Do you remember Colonel Evanko coming up to you and
8 thanking you for doing this investigation?

9 A Yes, I think I did believe I ran into him in the halls
10 of Commissioner's Complex one time. I am not sure if it was
11 this investigation though. I mean he did come over and
12 expressed appreciation for work done on an investigation.

13 Do I think it was this one? Probably. But I
14 can't say a hundred percent.

15 Q Do you remember talking with me in the deposition?

16 A Yes.

17 Q And do you remember saying that in fact, it was this
18 investigation?

19 A I could have. It has been -- some time has passed
20 since the deposition also.

21 MR. PRINGLE: May I approach the witness?

22 THE COURT: Yes.

23 A I am not hedging on the issue. He could have easily
24 done so. I can't say at this particular stage a hundred
25 percent.

Rain - Cross

1 Q We will clear it up. Page 31 of the deposition. I
2 would like you to read page 31 of the deposition question and
3 answers down to there.

4 A Certainly.

5 Q From line seven until line 14. Line 19. I am sorry.

6 A From 7 to 19?

7 Q Yes.

8 A (reading) QUESTION: Thank you. One more question. Do
9 you know whether or not Lieutenant Colonel Coury received
10 information about this investigation?

11 MS. FORNEY: At any particular point in time?

12 BY MR. PRINGLE:

13 Q Well, during the normal investigative process and
14 adjudication.

15 ANSWER: It would have been normal for him. And
16 if I remember correctly, I think I saw him in the halls one
17 time, and he made a comment expressing appreciation on the
18 thoroughness of the investigation to me when I saw him. But
19 I can't say a hundred percent it was the case. I think it
20 was. (end of reading)

21 If I might clarify a little bit, sir, I thought
22 you asked me Colonel Evanko just a few minutes ago.

23 BY MR. PRINGLE:

24 Q I'm sorry. But you do acknowledge that Colonel Coury
25 did thank you for this investigation?

Rain - Cross

1 A Now I am not sure which one it was. One of the
2 Colonels came over and expressed appreciation for an
3 investigation. As I noted in the deposition, I also said I
4 wasn't still a hundred percent sure that it was this one.
5 That was line 19.

6 MR. PRINGLE: I have no further questions.

7 THE COURT: Redirect?

8 MS. FORNEY: No, Your Honor.

9 THE COURT: You may step down.

10 (Whereupon, the testimony of Garret Rain was
11 concluded.)

12 I hereby certify that the proceedings and evidence
13 are contained fully and accurately in the notes taken by me
14 on the trial of the above cause, and that this copy is a
15 correct transcript of the same.

Vicki L. Fox, RMR

16
17 Vicki L. Fox, RMR
18 Official Reporter
19

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